

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT GREBOW,

Plaintiff,

-against-

HYUNDAI OF NEW ROCHELLE, INC.

Defendants.

AFFIDAVIT OF ALAN
KACHALSKY, ESQ. IN
RESPONSE TO MAGISTRATE
YANTHIS' ORDER TO SHOW
CAUSE

Civil Action No.: 07 CIV 3209

STATE OF NEW YORK)
 ss:)
COUNTY OF WESTCHESTER)

ALAN KACHALSKY ESQ., an attorney duly admitted to practice before the courts of the State of New York, hereby deposes and says:

1. I am the attorney for Plaintiff. In such capacity, I am fully familiar with the facts and circumstances of this case.
2. This affirmation is in response to Magistrate Yanthis' Order to Show Cause directing Plaintiff to provide a status of the case in writing.
3. The summons and complaint was served on May 15, 2007, pursuant to NY GENERAL BUSINESS LAW § 306, by service on the NY State Department of State. Annexed hereto as Exhibit "A" is a copy of the Affidavit of Service.
4. When the time for defendant to answer had expired, affirmant wrote to the defendant on June 25, 2007, in an attempt to motivate defendant to answer the complaint, so as to provide the defendant an opportunity to defend the case on the merits as well as to avoid

encumbering the court with a motion for default which might likely be followed by a motion to vacate the default. A copy of the correspondence (without attachments) as well as the green return postcard, is annexed hereto as Exhibit "B."

5. Although affirment received the green postcard, the June 25, 2007 letter which was (originally) attached to the post-card, was returned to me with a yellow sticker which stated 'Forward time exp. written to sender. HYUNDAI OF NEW ROCHELLE, 1055 E. Jericho Tpke, Huntington, NY 11743-5434.' A copy of the envelope which was returned, is annexed hereto as exhibit "C."
6. Therefore, on July 22, 2007, defendant drafted a follow-up letter to HYUNDAI OF NEW ROCHELLE, INC., and mailed the letter, along with a copy of the June 25, 2007 letter and the enclosures which were enclosed in the June 25, 2007 letter, and mailed them (the following day), via first class mail, to: HYUNDAI OF NEW ROCHELLE, 1055 E. Jericho Tpke, Huntington, NY 11743-5434.
7. The letter, (a copy of which is annexed hereto as exhibit "D," along with the 'Certificate of Mailing,') stated "If we do not hear from your or your attorneys within ten days, we will move for a default judgement."
8. Affirment intended to move for a default judgement after the ten days period indicated in the July 22 correspondence, plus five days for mailing, has expired. However, on July 28, 2007, the post office returned the July 22, 2007 letter (exhibit "D."), which was stamped Returned to Sender, Undeliverable as addressed Forwarding Order Expired.' A copy of this envelope is annexed hereto as exhibit "E."

9. Having now taken all reasonable steps to provide defendant with the opportunity to defend this case on the merits, Plaintiff will now move for a default judgement forthwith.

Dated: Rye Brook, NY
August 1, 2007

By: 
ALAN KACHALSKY, ESQ.

Subscribed and sworn to before me this
1st day of August, 2007


Notary Public

Natalie M. Spedaliere
Notary Public, State of New York
No. 01SP6104334
Qualified in Westchester County
Term Expires January 20, 2008

Robert Grebow,

Plaintiff,

AFFIDAVIT OF SERVICE

Index No: 07 Civ. 3209

-against-

Hyundai of New Rochelle, Inc.,

Defendant.

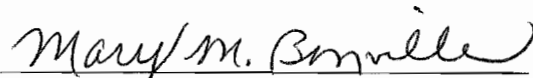
State of New York)

ss:

County of Albany)

Mary M. Bonville, being duly sworn, deposes and says:

Deponent is over the age of eighteen years and is a resident of New York State and is not a party to this action. That on May 15, 2007 at approximately 11:10 a.m. deponent served the following specific papers pursuant to Section 306 of the Business Corporation Law; Summons in a Civil Case and Verified Complaint with Jury Demand and Civil Cover Sheet; that the corporation served was Hyundai of New Rochelle, Inc., a domestic business corporation, the defendant in this action, by personally serving two copies of the aforesaid papers at the office of the Department of State located in the City of Albany, New York by delivering to and leaving the papers with Donna Christie, a white female with blonde hair, being approximately 36-45 years of age; height of 5'0"-5'3", weight of 130-160 lbs., being an authorized person in the Corporation Division of the Department of State and empowered to receive such service. That at the time of making such service deponent paid to the Secretary of State the fee prescribed by Law in the amount of \$40.00.


Mary M. Bonville

Sworn to before me this 15th day of May, 2007


Ruth A. Dennehey

Notary Public – State of New York

Qualified in Albany County

Registration No. 4729775

Commission Expires: 11-30-2010

ALAN KACHALSKY, ESQ.

800 Westchester Avenue, Ste S608 • Rye Brook, New York 10573 • (914) 220-5324 • E-mail: catchsky@earthlink.net

June 25, 2007

HYUNDAI OF NEW ROCHELLE, INC.
200 Main Street
New Rochelle, New York 10801-5738

Re: ROBERT GREBOW v. HYUNDAI OF NEW ROCHELLE, INC.

Dear sir/madam:

I am enclosing a copy of the summons and complaint, which was served upon **HYUNDAI OF NEW ROCHELLE, INC.** on May 15, 2007, by service upon the Department of State (see affidavit of service, included herewith).

I am also enclosing a copy of:

1. Civil Cover Sheet
2. Individual Practices of Magistrate Judge George A. Yanthis;
3. 3rd Amended Instructions for Filing an Electronic Case or Appeal;
4. Guidelines for Electronic Case Filing;
5. United States District Court, Southern District of New York, 'Procedures for Electronic Case Filing (March 6, 2003)

Although **HYUNDAI OF NEW ROCHELLE, INC.** was served on May 15, 2007, we have not received Hyundai's answer, which is now overdue.

However, before seeking a default judgement, we are forwarding you the aforesaid documents as a courtesy. **IF WE DO NOT HEAR FROM YOUR OR YOUR ATTORNEYS WITHIN TEN DAYS, WE WILL MOVE FOR A DEFAULT JUDGEMENT.**

Thank you for your cooperation.

Very truly yours,



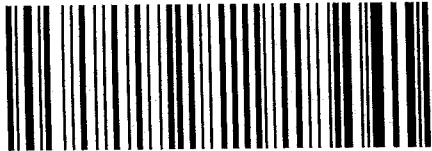
ALAN KACHALSKY

| SENDER: COMPLETE THIS SECTION | | COMPLETE THIS SECTION ON DELIVERY | |
|--|--|--|--------------------------------------|
| <ul style="list-style-type: none">■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits. | | <p>A. Signature X <u>SW GORDON</u> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> | |
| | | B. Received by (Printed Name) | C. Date of Delivery <u>7/5/07</u> |
| 1. Article Addressed to: <u>Hyundai of New Rochelle, Inc.</u> <u>200 Main Street</u> <u>New Rochelle, NY 10801</u> | | D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No | |
| | | 3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. | |
| | | 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes | |
| 2. Article Number (Transfer from service label) | | <u>7007 0710 0004 0203 0942</u> | |

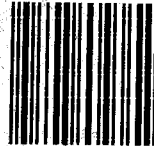
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL™



7007 0710 0004 0203 0942



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10801

U.S. POSTAGE
PAID
RYE, NY
10580
JUN 25, 07
AMOUNT

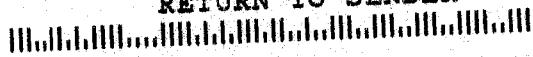
\$6.45

00019026-03

HYUNDAI OF NEW ROCHELLE, INC.
200 Main Street
New Rochelle, New York 10801-5738

HYUN200* 108017028 1206 04 06/30/07
FORWARD TIME EXP RTN TO SEND
:HYUNDAI OF NEW ROCHELLE
1055 E JERICHO TPKE
HUNTINGTON NY 11743-5434

RETURN TO SENDER



FIRST CLASS

**RETURN RECEIPT
REQUESTED**

ALAN KACHALSKY, ESQ.

800 Westchester Avenue, Ste S608 • Rye Brook, New York 10573 • (914) 220-5324 • E-mail: catchsky@earthlink.net

July 22, 2007

HYUNDAI OF NEW ROCHELLE, INC.
1055 E. Jericho Tpke
Huntington, NY 11743-5434

Re: ROBERT GREBOW v. HYUNDAI OF NEW ROCHELLE, INC.

Dear sir/madam:

Enclosed is a copy of the correspondence which was originally sent via certified mail, to HYUNDAI OF NEW ROCHELLE, INC. at 200 Main Street, New Rochelle, New York 10801-5738 on June 25, 2007. Although we received the 'green post card,' back, we also received the original letter back with a yellow sticker which stated 'Forward time exp. rtn to sender.' As this sticker also gave the address 1055 E. Jericho Tpke, Huntington, NY 11743-5434, we are re-sending this letter (including the enclosures) to this address.

Although **HYUNDAI OF NEW ROCHELLE, INC.** was served on May 15, 2007, we have not received Hyundai's answer, which is now overdue. Although our previous correspondence indicated we would seek a default judgement, we are extending that to ten days from the date of this letter, in view of the fact that you apparently never received our last certified mail.

**IF WE DO NOT HEAR FROM YOUR OR YOUR ATTORNEYS WITHIN TEN DAYS,
WE WILL MOVE FOR A DEFAULT JUDGEMENT.**

Thank you for your cooperation.

Very truly yours,


ALAN KACHALSKY

| U.S. POSTAL SERVICE | CERTIFICATE OF MAILING |
|--|------------------------|
| MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER | |
| Received From: | |
| ALAN R. KAMUSKY, ESQ | |
| 800 Westchester Ave Suite 5-608 | |
| Rye Brook NY 10571 | |
| One piece of ordinary mail addressed to: | |
| Hyundai of New Rochelle, Inc. | |
| 155 E Jericho Turnpike | |
| Huntington NY 11743-5 | |

PS Form 3817, January 2001

0000



00019026-03

\$1.05

JUL 23 07

AMD/LNT

U.S. POSTAGE

PAID

RYE, NY

10580

ALAN KACHALSKY, ESQ.
800 Westchester Avenue, Suite S-608
Rye Brook, NY 10573

11/15/07

HT

HYUNDAI OF NEW ROCHELLE, INC.
1055 E. Jericho Tpke.
Huntington, NY 11743-5434

DELIVERED TO ADDRESSEE
NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES



0000



11743

U.S. POSTAGE
PAID
RYE, NY
10580
JUL 23, 07
AMOUNT
\$1.61
00019026